

REMARKS

Favorable consideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-9 are pending, with Claims 1-7 amended by the present amendment.

In the outstanding Office Action, Claims 1, 2 and 7 were rejected under 35 U.S.C. § 102(e) as anticipated by Padovani et al (U.S. Patent Publication No. 2003/0063583, hereinafter Padovani); Claims 3 and 8 were rejected under 35 U.S.C. § 103(a) as unpatentable over Padovani in view of Servais et al (U.S. Patent No. 6,141,388, hereinafter Servais); Claims 4 and 9 were rejected under 35 U.S.C. § 103(a) as unpatentable over Padovani in view of Nakano (U.S. Patent Publication No. 2002/0193135, hereinafter Nakano); and Claims 5 and 6 were indicated as containing allowable subject matter.

Applicants acknowledge with appreciation the indication of allowable subject matter.

Claims 1-7 are amended to more clearly describe the distinctly claimed Applicants' invention. Support for these amendments is found in Applicants' originally filed specification.<sup>1</sup> No new matter is added.

Briefly recapitulating, amended Claim 1 is directed to a radio communications method in a system with an automatic repeat request between a radio base station and a radio terminal executing one or more processes for automatic repeat request. The method includes executing the processes for automatic repeat request in the radio base station and in the radio terminal and transmitting/receiving data to/from the radio terminal. The method also a) includes monitoring in the radio base station for the occurrence of handover or for a possibility of occurrence of handover in the radio terminal and b) limiting the number of retransmission processes executed in the executing step in accordance with a result of the monitoring conducted at the monitoring step. Claims 2 and 7 are directed to a radio base

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<sup>1</sup> Specification, page 2, paragraph 3.

station and a radio terminal configured to execute respective portions of the method recited in Claim 1. The term “number of processes” is defined in Applicants’ originally filed specification as a number of processes for ARQ (e.g., a plurality of processes 1 to N conducting HARQ processing).<sup>2</sup> The claimed invention allows for improved throughput.<sup>3</sup>

Padovani describes a data communications system capable of variable rate transmission. This capability may be applied in a handoff situation.<sup>4</sup> However, Padovani fails to disclose or suggest executing automatic repeat request processes in radio base station and in a radio terminal, monitoring the radio terminal at the radio base station, and limiting a number of retransmission processes based on the results of the previously described monitoring.

MPEP § 2131 notes that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art.” *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) (claim to a system for setting a computer clock to an offset time to address the Year 2000 (Y2K) problem, applicable to records with year date data in “at least one of two-digit, three-digit, or four-digit” representations, was held anticipated by a system that offsets year dates in only two-digit formats). See also MPEP § 2131.02. “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Because Padovani does not disclose or suggest all

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<sup>2</sup> Specification, page 2, paragraph 3.

<sup>3</sup> Specification, page 3, lines 8-16.

<sup>4</sup> Padovani, paragraphs 0081 through 0086.

the features recited in Claims 1, 2 and 7, Padovani does not anticipate the invention recited in Claims 1, 2 and 7, and all claims depending therefrom.

Applicants have considered the remaining references applied in the Official Action, and submit that none of these applied references cure the deficiencies of Padovani. As none of the cited prior art, individually or in combination, disclose or suggest all the elements of independent Claims 1, 2 and 7, Applicants submit the inventions defined by Claims 1, 2 and 7, and all claims depending therefrom, are not rendered obvious by the asserted references for at least the reasons stated above.<sup>5</sup>

Accordingly, in view of the present amendment and in light of the previous discussion, Applicants respectfully submit that the present application is in condition for allowance and respectfully request an early and favorable action to that effect.

Respectfully submitted,

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<sup>5</sup> MPEP § 2142 "...the prior art reference (or references when combined) must teach or suggest **all** the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaack, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)."